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No. 94-909

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

HUGO PRINCZ,
Petitioner,
v.
THE FEDERAL REPUBLIC OF GERMANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (AMERICAN SECTION) AND THE NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL AS AMICI CURIAE IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The Anti-Defamation League of B'nai B'rith ("ADL"),[1] The International Association of Jewish Lawyers and Jurists (American Section) ("IAJLJ"),[2] and The National Jewish Community Relations Advisory Council ("NJCRAC")[3] (collectively "the Amici"), by their undersigned counsel, respectfully move for leave to file the attached brief as amici curiae in support of the Petition for Writ of Certiorari. The Amici have requested and obtained the written consent to file this brief from Petitioner, Hugo Princz. Consent from The Federal Republic of Germany, Respondent, was requested but refused.[4] Correspondence documenting the respective positions of the parties has been filed with the Clerk.

The Petition seeks review of the decision of the United States Court of Appeals for the District of Columbia Circuit that the district court lacked subject matter jurisdiction in this case pursuant to the Foreign Sovereign Immunities Act of 1976 ("FSIA").[5]

The subject of this litigation involves the most heinous acts of discrimination, barbarism, degradation, and mass

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[2] IAJLJ is a private not-for profit corporation, incorporated in the District of Columbia. Its address is P.O. Box 65269, Washington DC 20035.

[3] NJCRAC is a private not-for-profit corporation, incorporated in New York. Its address is 433 Park Avenue South, New York, NY 10016.

[4] Respondent previously consented to ADL and IAJLJ jointly filing a brief amici curiae when this case was before the United States Court of Appeals for the District of Columbia Circuit. ADL and IAJLJ are baffled as to why Respondent would now reverse its position entirely and deny consent here. Perhaps Respondent will file an objection to this motion stating its reasons for denying consent.

[5] 28 U.S.C. §§ 1330, 1391(f), 1602-1611.

murder of Jews ever committed—the Holocaust. Moreover, the case concerns the enslavement and barbaric treatment of a Jewish *American* by the German government during World War II.

As national humanitarian organizations, the Amici share a common interest in protecting the human rights of all persons, and in particular, individuals who are in the religious or ethnic minority. This case raises, for the organized Jewish community, two issues that are central to its consciousness, and to the Amici's collective mission: the Holocaust and the protection of the rights of individuals, in this case an American who was enslaved by a foreign government and who seeks redress in our courts. The interests and activities of the Amici enable them to provide this Court with an important perspective that extends beyond that of the parties, and to address more broadly the far-reaching implications that the appellate court's ruling may have on the rights of all Americans.

Specifically, the Amici have a substantial interest in this litigation for several reasons.

First, since its founding in 1913, ADL has endeavored to advance goodwill and mutual understanding among all Americans, to combat prejudice and to secure human rights for all individuals. ADL desires to participate in this case particularly in furtherance of its charter mandate "to secure justice and fair treatment of all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens." The events giving rise to this lawsuit, and the salient legal issues, fall squarely within the defined interests of ADL.

IAJLJ is a membership organization consisting of attorneys and judges in more than 32 countries around the world. Its founder was retired Justice Haim Cohn of the Supreme Court of Israel, and its Honorary President, until his death, was former Justice Arthur J. Goldberg. IAJLJ's American Section was organized in 1983 by members of the American Jewish legal community to defend Jewish interests and human rights in the United States and

abroad. In fulfillment of its mission, IAJLJ works to safeguard the civil and human rights of Jews, minority groups and victims of oppression everywhere; sponsors educational programs on topical legal issues; promotes the study of Jewish law and ethics through law school courses, seminars, and publications; and uses its official international status as a United Nations Nongovernmental Organization to provide diplomatic and legal assistance to Jews around the world.

IAJLJ's interest in this case is to provide the Court with a full and clear picture of the events and conditions giving rise to Mr. Princz's claims, and to demonstrate that the courts of the United States indeed have the power to adjudicate his claims against The Federal Republic of Germany. Among IAJLJ's concerns has been the identification and legal prosecution of those who participated in the genocide of the Jewish people during World War II.

NJCRAC is the national planning and coordinating body for Jewish community relations and public policy in the United States. As an umbrella organization, NJCRAC comprises thirteen national agencies and 117 community organizations, representing approximately 200 local communities throughout the United States. NJCRAC's national member organizations include: American Jewish Committee, American Jewish Congress, Anti-Defamation League, B'nai B'rith, Hadassah, Jewish Labor Committee, Jewish War Veterans of the U.S.A., National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, United Synagogue of Conservative Judaism, Women's League for Conservative Judaism, and Women's American ORT.

NJCRAC's mandate, since its founding in 1944, has been to work to secure the civil rights and civil liberties of all Americans, particularly those who are members of minority and religious groups, and not exclusively Jewish Americans. NJCRAC has filed and participated in numerous amicus briefs in a broad range of civil liberties and civil rights cases.

Second, ADL and IAJLJ have been involved in this litigation since mid-1993. ADL and IAJLJ (along with other interested individuals) filed a brief amici curiae in this case when it was before the United States Court of Appeals for the District of Columbia Circuit. *Princz v. Federal Republic of Germany*, 26 F.3d 1166 (D.C. Cir. 1994).

Third, the Amici are experienced in and have been committed to furthering their interests by filing amicus briefs in other cases that have dealt with issues similar to those raised in this litigation. For example, ADL filed a brief on the merits in *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 1812 (1993). IAJLJ filed an amicus brief in *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993) (amicus brief in support of motion for rehearing en banc), *cert denied, Rison v. Demjanjuk*, 115 S. Ct. 295 (1994), which similarly dealt with German atrocities committed in the Holocaust.

The Amici are very familiar with the questions involved in this litigation and have reason to believe that one significant legal question may not be fully addressed by Petitioner. Additional briefing would assist this Court in determining whether Germany has waived implicitly whatever sovereign immunity it might otherwise have had by committing actions so lawless against an American, that the conduct: (1) violated the most fundamental and universally accepted norms of international law known as *jus cogens*; and (2) was the basis for international criminal prosecutions of German government officials.[6] Accordingly, the Amici wish to argue that the "implied

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[6] In convening a tribunal at Nuremberg in the mid-1940's to punish German government officials as war criminals, the executive branch of our government confirmed that Germany waived its sovereign immunity by committing these atrocious acts. The Amici wish to highlight the significance of the Nuremberg prosecutions in the context of the "implied waiver" argument, and in so doing, to demonstrate that under these circumstances, the courts of this nation are not closed to an American citizen who has been lawlessly victimized by a foreign state.

waiver" provision of the FSIA (28 U.S.C. § 1605(a)(1)) confers subject matter jurisdiction in this case.

The FSIA's implied waiver provision evidences a Congressional intent to ensure that the courts of this country remain open to Americans who have been victimized by a foreign state in violation of the most basic elements of international law. Given the frequency with which Americans travel abroad, and the instability of foreign governments, the scope of the legal safeguards against brutal victimization by foreign states is clearly an issue of enormous national importance.

The Amici have a longstanding commitment to safeguarding the civil rights of all Americans, and have an abiding interest in the welfare of all Jewish Americans, including Hugo Princz. For these reasons, and those set forth in the attached brief, the Amici respectfully request leave to file a brief amici curiae.

Respectfully submitted,

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QUESTION PRESENTED

Whether The Federal Republic of Germany waived its sovereign immunity by implication under section 1605(a)(1) of the Foreign Sovereign Immunities Act of 1976 by committing against an American actions so lawless that the conduct: (1) violated the most fundamental and universally accepted norms of international law; and (2) was the basis for the criminal prosecution and execution of German government officials as war criminals by an international tribunal comprising the United States and other nations?

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BRIEF OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (AMERICAN SECTION) AND THE NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL AS AMICI CURIAE IN SUPPORT OF PETITIONER

The Anti-Defamation League of B'nai B'rith ("ADL"), The International Association of Jewish Lawyers and Jurists (American Section) ("IAJLJ"), and The National Jewish Community Relations Advisory Council ("NJCRAC") (collectively, "the Amici"), respectfully submit this brief amici curiae contingent upon the granting of the accompanying motion for leave. The brief supports the Petition for a Writ of Certiorari filed in this case by Petitioner, Hugo Princz, and urges reversal of the appellate court's decision below.

INTEREST OF THE AMICI CURIAE

As more fully described in the accompanying Motion for Leave to File Brief Amici Curiae, the Amici have a substantial interest in this litigation.

Each of the Amici has endeavored to advance goodwill and mutual understanding among all Americans, to combat prejudice, and to secure human rights for all individuals. Although deeply committed to fighting against the defamation of Jews, the mission of each of the Amici is broader and secular. In this case, the Amici wish to vindicate the rights of all Americans who unfortunately may become the prey of an outlaw foreign nation.

The subject of this litigation involves heinous acts committed by a foreign government against the Jewish people —the Holocaust. Moreover, the case concerns the official, government sanctioned enslavement and barbaric treatment of a Jewish *American* by the German government during World War II. The ultimate question presented, when simplified to its essence is: do the courts of the United States have the power to adjudicate civil claims asserted by an American citizen against an outlaw foreign state that enslaved and tortured him, and killed millions of other people solely because of their religion or ethnicity, all clearly in violation of the most fundamental and universally recognized norms of international law known as *jus cogens*?

The Amici's interest in this case is to support Mr. Princz's petition. The Amici's interest is also to demonstrate that when a foreign state commits actions against an American that are so lawless as to violate fundamental and universally accepted norms of international law, the courts of the United States indeed have jurisdiction to hear civil claims arising from such actions, and the Foreign Sovereign Immunities Act of 1976 (the "FSIA") does not immunize the foreign state from suit.

ADL and IAJLJ argued below, and all of the Amici wish to argue in this Court, that the "implied waiver" provision of the FSIA (28 U.S.C. § 1605(a)(1)) confers subject matter jurisdiction upon a federal district court in this case. The Federal Republic of Germany waived implicitly whatever sovereign immunity it might otherwise have had under the FSIA by violating the *jus cogens* norms of the law of nations. When a foreign state violates these fundamental requirements of a civilized world, it thereby waives its right to be treated as a sovereign. These issues were addressed at length in both the opinion of the appellate court filed by Circuit Judge Douglas Ginsburg and in the dissenting opinion filed by Circuit Judge Patricia Wald. Indeed, Judge Wald's dissenting opinion largely accepted the arguments and theories advanced by ADL and IAJLJ concerning an implied waiver under § 1605(a)(1).

The Amici have a demonstrated interest in this case, and believe strongly that this Court should grant the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The Amici adopt the Statement in the Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

There are several reasons why this Court should grant the Petition for Writ of Certiorari. These reasons, taken together, demonstrate that this case is of great national significance, weighing heavily in favor of review.

I. BECAUSE DECISIONS INTERPRETING THE FOREIGN SOVEREIGN IMMUNITIES ACT CAN HAVE A SERIOUS IMPACT ON U.S. RELATIONS WITH FOREIGN STATES, REVIEW BY THIS COURT IS PARTICULARLY APPROPRIATE.

The manner in which the federal courts interpret and implement the FSIA can impact relations between the United States and foreign states. Apparently for this reason, this Court has on several occasions rendered decisions interpreting provisions of the FSIA. For example, in *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983), this Court stated that sovereign immunity exists as "a matter of grace and comity on the part of the United States, and [is] not a restriction imposed by the Constitution." More recently, this Court confirmed in *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 n.1. (1989) that sovereign immunity has never been a right held by a foreign state, but instead is a privilege "granted" by the United States to foreign states. As such, this Court has been careful to clarify problems arising in defining the precise scope of this statutory grant of foreign sovereign immunity. *See Republic of Argentina v. Weltover, Inc.*, 112 S.Ct. 2160 (1992); *Saudi Arabia v. Nelson*, 113 S.Ct. 1471 (1993).

Congress enacted a comprehensive scheme for *judicial* determinations of questions of foreign sovereign immunity. This Court is the proper body to interpret the FSIA definitively in this important case that can affect relations between our government and a foreign state.

II. THIS COURT SHOULD ENUNCIATE A LEGAL STANDARD APPLICABLE TO "NON-TRANSACTIONAL" WAIVERS UNDER THE FSIA.

As a general rule, a foreign state is entitled to immunity under the FSIA unless an exception thereunder applies. One such exception is when "the foreign state has waived its immunity either explicitly or by implication". 28 U.S.C. § 1605(a)(1). To date, federal court decisions interpreting this provision have been restricted to situations where the foreign state allegedly waived immunity by implication in a negotiated contract,[1] in the course of a lawsuit,[2] or by some other act directly implicating the United States courts[3] (collectively referred

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[1] *See, e.g., Eckert Int'l Inc. v. Government of the Sovereign Demographic Republic of Fiji*, 32 F.3d 77 (4th Cir. 1994) (government of Fiji implicitly waived sovereign immunity by entering into a contract containing a choice of law provision requiring the agreement to be construed and interpreted according to Virginia law); *Joseph v. Office of Consulate Gen. of Nigeria*, 830 F.2d 1018 (9th Cir. 1987), *cert. denied*, 485 U.S. 905 (1988) (implied waiver premised on agreement by parties that U.S. Courts may be involved in disputes arising pursuant to the contract, regardless of whether that contract explicitly identified the governing law).

[2] *See, e.g., Drexel Burnham Lambert Group, Inc. v. Committee of Receivers for Galadari*, 12 F.3d 317 (2d Cir. 1993), *cert. denied*, 114 S.Ct. 1644 (1994) (no waiver of immunity by affirmatively answering complaint); *Rodriguez v. Transnave Inc.*, 8 F.3d 284 (5th Cir. 1993) (participation in litigation, two year delay in urging motion to dismiss on grounds of sovereign immunity, and removal by foreign sovereign did not constitute waiver of sovereign immunity); *Foremost-McKesson Inc. v. Islamic Republic of Iran*, 905 F.2d 438 (D.C. Cir. 1990) (no waiver of immunity when sovereign did not respond substantively to any averments or pose any defenses to claims, but argued merely for change of forum); *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370 (7th Cir. 1985) (USSR did not waive its immunity by failing to defend the action because there was no conscious decision to take part in the action nor a failure to raise sovereign immunity despite the opportunity to do so).

[3] *See, e.g., Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 1812 (1993).

to herein as "transactional waivers"). The instant case, however, presents this Court with an opportunity to advise the lower courts as to how to interpret the FSIA waiver provision in cases involving what might be characterized as a "*non-transactional*" implied waiver—cases where the implicit waiver arises from the unlawful conduct that gives rise to the claim itself, and not from some transaction capable of signalling the foreign state's willingness to be sued in U.S. courts.

The appellate court below, relying in part on several transactional waiver cases, held very broadly that "an implied waiver depends upon the foreign government having at some point indicated its amenability to suit." *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1174 (D.C. Cir. 1994) *reprinted in* the Petition for Writ of Certiorari, Appendix C (*Pet. Cert. App. C*) page 3a, 19a. The appellate court went on to state that "Mr. Princz does not maintain, however, that either the present government of Germany or the predecessor government of the Third Reich *actually indicated, even implicitly, a willingness to waive immunity* for actions arising out of the Nazi atrocities." *Id.; Pet. Cert. App. C* at 19a (emphasis added). The court characterized this standard as "the intentionality requirement implicit in § 1605(a)(1)". *Id.; Pet. Cert. App. C* at 19a.

There are no reported cases that address directly whether *jus cogens* violations can constitute an implied waiver under § 1605(a)(1) of the FSIA. This Court in *Amerada Hess* found no waiver of sovereign immunity under § 1605(a)(1) where the foreign state defendant had signed an international agreement "that contains no mention of a waiver of immunity to suit in United States courts or even the availability of a cause of action in the United States." 488 U.S. at 442-43. Like all of the other "transactional" waiver cases, the waiver in *Amerada Hess* was not based on the conduct giving rise to the cause

of action. *Amerada Hess* also did not involve violations of the peremptory norms of international law.

This Court in *Amerada Hess* apparently endorsed the view that a foreign state may still be entitled to sovereign immunity, even where the state has violated international law. In *Amerada Hess* the violation involved one nation's wartime bombing of a neutral commercial oil tanker. As offensive as this conduct may have been, the violation of international law was not of the compelling *jus cogens* variety. Unfortunately, as *Amerada Hess* suggests, there are many lawless acts that a foreign state, particularly in wartime, can commit with immunity from later civil litigation in our courts.

The horrific conduct that Mr. Princz alleges here, however, is completely outside that protection and continues at least one narrow category of conduct that can never be carried out with impunity against an American. *Amerada Hess* did not deal with state-sponsored genocide, slavery and religious persecution. Nor did the United States have a substantial interest in adjudicating that case, which involved claims by a foreign corporation against another foreign state. This Court did not consider (and our research has failed to locate a case where it has considered) whether *jus cogens* violations committed against an American citizen could constitute an implied waiver under § 1605(a)(1) of the FSIA.

The appellate court in this case, apparently lacking a suitable alternative to the standards enunciated in the transactional waiver cases, evaluated this non-transactional waiver case using the same standards by which it would have evaluated a transactional waiver. Appropriate judicial standards do exist, however, for the evaluation of such an implicit waiver, and the "intentionality requirement" apparently derived in the transactional waiver cases is simply inapposite.

There is nothing in the FSIA's legislative history indicating that Congress intended to confer immunity on

flagrant violators of fundamental norms of international law known as *jus cogens*, unless the outlaw foreign nation actually evinced its amenability to the civil jurisdiction of our courts, particularly where the victim is an American. Rather, Congress intended that "claims by foreign states to sovereign immunity are best made by the judiciary on the basis of a statutory regime *which incorporates standards recognized under international law.*" H.R. Rep. No. 1487, 94th Cong., 2d Sess. 12, 14, *reprinted in* 1976 U.S.C.C.A.N. (90 Stat. 2891) 6604, 6613 (emphasis added). The appellate court's extraordinarily narrow interpretation of the FSIA's implied waiver provision runs counter to the longstanding cannon of statutory construction that "an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains." *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). While the appellate court's construction of § 1605(a)(1) does not *per se* violate international law, it is clearly inconsistent with it because the court granted an immunity that the international community as a whole has denied.

This Court should interpret the FSIA in such a way as to harmonize it with international law. The dissent below clearly and correctly stated:

> The only way to reconcile the FSIA's presumption of foreign sovereign immunity with international law is to interpret § 1605(a)(1) of the Act as encompassing the principle that a foreign state implicitly waives its right to sovereign immunity in United States courts by violating *jus cogens* norms.

Princz, 26 F.3d at 1183; *Pet. Cert. App. C* at 39a.

III. THE APPELLATE COURT'S INTERPRETATION OF THE FSIA AFFECTS MORE THAN THE LITIGANTS, AND MAY AFFECT AMERICANS WHO TRAVEL ABROAD.

The appellate court's decision affects the rights of any American who may fall victim to uncivilized acts of barbarism committed by a foreign state abroad. Under the appellate court's decision, absent some "intentional" waiver by the foreign state, our courts are automatically closed to an American who seeks civil remedies under those circumstances. Given the frequency with which Americans travel abroad, and are therefore at risk of being injured by the actions of a foreign state, the appellate court's narrow reading of the implied waiver provision unnecessarily removes a possible deterrent to the type of barbaric acts to which Mr. Princz was subjected. Reversal of the appellate court's decision (and adoption instead of the dissent's reasoned interpretation of the FSIA) would serve to protect Americans abroad. A reversal would inform the international community that in the United States courts, there are real consequences for the most serious violations of international law where the victim is an American. The protection of Americans abroad is a matter of enormous national importance, and militates in favor of review here.

IV. A REVERSAL WOULD BE CONSISTENT WITH THE ACTION OF OUR EXECUTIVE BRANCH AT NUREMBERG.

Review and reversal by this Court would furnish an interpretation of the FSIA's implied waiver provision that is consistent with the prior actions and the express wishes of our executive branch. At the close of World War II, and immediately following Germany's unconditional surrender, our executive branch and the governments of our allies brought German officials to justice for precisely the same offenses that gave rise to Mr. Princz's claims here. The United States and its allies convened, on German soil, an international judicial tribunal for this purpose. The Nuremberg Charter and the subsequent trial and ex-

ecution of major German war criminals confirmed that, as far as our executive branch was concerned, German officials could not assert the sovereign immunity of the German state to shield themselves from prosecution for crimes of war and crimes against humanity. The Nuremberg tribunal's decision [4] expressly rejected the defense of immunity raised by the German officials and government organizations.

The rationale behind *The Nuremberg Decision* was simple and compelling—he who commits heinous international crimes, even when doing so pursuant to the authority and orders of the state, is not shielded from liability *if the state, in authorizing the action, has violated the most fundamental norms of international law.* The defendants at Nuremberg were not immune from suit because Germany was not immune from suit. *The Nuremberg Decision* is consistent with the traditional basis for sovereign immunity recognized by our courts—namely that sovereign immunity is viewed as a privilege, and reserved on the grounds of grace and comity, *only* for nations that respect basic and universally recognized dictates of international conduct. *See Victory Transp., Inc. v. Comisaria General de Abastecimientos y Transportes,* 336 F.2d 354 (2d Cir. 1964), *cert. denied,* 381 U.S. 934 (1965).

Because Germany engaged in lawless and inhumane conduct far beyond that which might have been permissible even for a nation at war, *The Nuremberg Decision* rendered Germany *hostis humani generis,* " an enemy of all mankind." Because of this conduct itself—which included slavery, torture, religious persecution and genocide —Germany was held to have forfeited whatever sovereign immunity it might otherwise have had for those specific acts committed in that time.

Similarly, the FSIA's implied waiver provision appears to be "based upon the general presumption that states

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[4] *United States v. Goering,* 6 F.R.D. 69 (1946) (*"The Nuremberg Decision"*).

abide by international law and, hence, violations of international law are not 'sovereign' acts." *Cf. West v. Multibanco Comermex, S.A.*, 807 F.2d 820, 826 (9th Cir.), *cert. denied*, 482 U.S. 906 (1987) This is the central principle that enabled the United States and other governments to try, convict and execute German government officials on German soil—notwithstanding any notion of sovereign immunity. It is this same principle that should govern the interpretation of § 1605(a)(1) here as well.

The history of German atrocities during World War II is well documented in *The Nuremberg Decision*. Millions of Jews, like Mr. Princz's family, were captured, tortured and systematically slaughtered by the German government. For example, the commandant of Auschwitz from May, 1940 to December 1, 1943, testified that during this period *at Auschwitz alone*, approximately 2,500,000 people were exterminated and another 500,000 died of starvation and disease. *The Nuremberg Decision*, 6 F.R.D. at 129. Mr. Princz and two of his brothers were enslaved at Auschwitz—only Mr. Princz survived. Adolph Eichmann, who was in charge of the German plan to "liquidate" the Jews, "estimated that the policy pursued resulted in the killing of 6,000,000 Jews, of which 4,000,000 were killed in the extermination institutions." *Id.* at 130.[5] Mr. Princz was the sole member of his family to survive the Holocaust.

The Nuremberg tribunal found that the conduct giving rise to Mr. Princz's claims here constituted "war crimes" and "crimes against humanity," as defined in Article 6

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[5] While the Amici believe that a court could properly take judicial notice of the Nuremberg tribunal's factual findings, these specific facts bear repeating here because they are *admissions* of German officials. Unfortunately, there are individuals and organizations, commonly known as "Holocaust Revisionists" or "Holocaust Deniers," that still believe the Holocaust never happened, and is instead, a fabrication by Jewish groups. *See McCalden v. California Library Ass'n*, 955 F.2d 1214, 1221, 1230-31 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 2306 (1992).

of the Nuremberg Charter. *Id.* at 77-78. The tribunal also confirmed that its Charter was "the expression of international law existing at the time of its creation," *id.* at 107, reflecting "customs and practices of states which gradually obtained universal recognition." *Id.* at 109. Germany's conduct was accurately characterized as being "in complete disregard of the elementary dictates of humanity." *Id.* at 113. The documented atrocities against the Jewish people were "part and parcel" of German policy, *id.* at 128, demonstrating quite clearly that the German government was "a soulless regime." *Id.* at 118. Germany's steadfast assertion of sovereign immunity in the *Princz* case similarly reflects a cold and callous disregard for the human dignity of perhaps the only American survivor of the Nazi concentration-camps.

Mr. Princz has alleged that Germany persecuted him on religious grounds, enslaved him, and subjected him to inhumane treatment in German concentration camps. Germany simply murdered his other family members. All of the above-described conduct giving rise to Mr. Princz's claims violated the *jus cogens* or "peremptory norms" [6] of international law.

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[6] Interestingly, the German Federal Constitutional Court described "peremptory norms" as follows:

> The quality of such peremptory norms [*jus cogens*] may be attributed only to such legal rules as are firmly rooted in the legal conviction of the community of nations and are indispensable to the existence of the law of nations as an international legal order and the observance of which can be required by all members of the international community.

Judgment of Apr. 7, 1965, Bundesverfassungsgericht, BVerfGE, W. Ger., *quoted* in Stefan Riesenfeld, *Jus Dispositivum and Jus Cogens in International Law: In the Light of a Recent Decision of the German Supreme Constitutional Court*, 60 Am. J. Int'l L. 511, 513 (S. Riesenfeld trans. 1966).

Germany's assertion of sovereign immunity in the *Princz* case flies in the face of its own apparent judicial recognition that certain conduct is so dispicable and universally denounced by the entire civilized world that other nations can sanction the offending nation for that conduct.

CONCLUSION

The Amici believe that the United States courts have a compelling interest in adjudicating legitimate civil claims brought by an American citizen against Germany arising from unspeakable violations of the most basic and universally recognized standards of international law. As an American, Mr. Princz deserves his day in an American court, and § 1605(a)(1) of the FSIA provides a basis for jurisdiction here. By its abhorrent conduct, Germany forfeited whatever immunity it might otherwise have had.

For each and all of these reasons, this Court should grant review. The appellate court's split decision raises issues of great national importance beyond the narrower interests of the litigants. This is why the Amici have asked for leave to file this brief, and why this Court should grant the Petition for Writ of Certiorari.

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